

SENATE BILL NO. 305

INTRODUCED BY V. COCCHIARELLA

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT AN INJURED WORKER WITH PHYSICAL RESTRICTIONS WHO HAS NOT REACHED MAXIMUM HEALING MAY, UPON APPROVAL OF THE TREATING PHYSICIAN, RETURN TO AN ALTERNATIVE OR MODIFIED EMPLOYMENT POSITION WITH A DIFFERENT EMPLOYER IF AN ALTERNATIVE OR MODIFIED EMPLOYMENT POSITION IS NOT AVAILABLE WITH THE EMPLOYER THAT WAS THE INJURED WORKER'S EMPLOYER AT THE TIME OF INJURY; AMENDING SECTION 39-71-712, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-712, MCA, is amended to read:

"39-71-712. Temporary partial disability benefits. (1) ~~If~~ Subject to the provisions of subsection (6), if prior to maximum healing, an injured worker has a physical restriction and is approved to return to a modified or alternative employment that the worker is able and qualified to perform and the worker suffers an actual wage loss as a result of a temporary work restriction, the worker qualifies for temporary partial disability benefits.

(2) An insurer's liability for temporary partial disability must be the difference between the injured worker's average weekly wage received at the time of the injury, subject to a maximum of 40 hours a week, and the actual weekly wages earned during the period that the claimant is temporarily partially disabled, not to exceed the injured worker's temporary total disability benefit rate.

(3) Temporary partial disability benefits are limited to a total of 26 weeks. The insurer may extend the period of temporary partial disability payments.

(4) ~~A~~ Except as provided in subsection (6), a worker is not eligible for temporary partial disability benefits or temporary total disability benefits if:

(a) the worker has been released by the treating physician to return to a modified or alternative position that the individual is able and qualified to perform with the same employer;

(b) the wages payable in the modified or alternative position, when combined with the temporary

1 partial disability benefits, would result in an equivalent or higher wage than the worker received at the time
2 of injury; and

3 (c) the worker refuses to accept the modified or alternative position. A worker requalifies for
4 temporary total disability benefits if the modified or alternative position is no longer available to the worker
5 and the worker continues to be temporarily totally disabled as defined in 39-71-116.

6 (5) Temporary partial disability may not be credited against any permanent partial disability award
7 or settlement under 39-71-703.

8 (6) Unless a collective bargaining agreement precludes an injured worker from working in a
9 modified or alternative position with a different employer or includes criteria different from those outlined
10 in this subsection (6), an injured worker who has not reached maximum healing and who has a physical
11 restriction may return to a modified or alternative position with a different employer at the same or a lower
12 rate of wages as the rate paid by the employer at the time of injury if:

13 (a) a modified or alternative employment with the employer at the time of injury is not provided
14 and the injured worker and that employer agree to the modified or alternative position with a different
15 employer;

16 (b) a written description and all required duties of the modified or alternative position with a
17 different employer are approved by the treating physician;

18 (c) both the employer at the time of injury and the injured worker agree to the type of alternative
19 work, the alternative employer, and the terms and conditions of employment, including payment of
20 benefits and employment taxes for the modified or alternative position with a different employer;

21 (d) an employee is not displaced as a result of the injured worker's placement in the modified or
22 alternative position with a different employer; and

23 (e) the employer at the time of injury and, the different employer, AND THE INJURED WORKER agree
24 in writing to the terms and conditions, INCLUDING PAYMENT OF BENEFITS, covering the injured worker for
25 subsequent injury, unemployment insurance, employment taxes, and liability and provide a copy of the
26 agreement to the injured employee.

27 (7) Any additional expenses related to the modified or alternative position, including travel,
28 equipment, or training, must be paid by either the employer at the time of injury or the different employer
29 and may not be charged to or deducted from the wages or benefits of the injured employee.

30 (8) Notwithstanding a written agreement between the employer at the time of injury and a

1 different employer, the employer at the time of injury is the primary employer if a dispute over wages,
2 benefits, employment taxes, workers' compensation insurance, or other terms or conditions of employment
3 occurs.

4 (9) The injured worker may refuse to accept a modified or alternative position with an employer
5 other than the employer at the time of injury without penalty. If the injured worker is offered a modified
6 or alternative position with a different employer, the injured worker must be given written notice of the
7 right of refusal from the employer at the time of injury and the insurer prior to beginning work with the
8 different employer."

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10 NEW SECTION. Section 2. Effective date -- applicability. [This act] is effective July 1, 2001, and
11 applies to a claim for benefits for an injury occurring on or after July 1, 2001.

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